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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,307	03/30/2007	Byron Scott Bailey SR.	TS/4-22995/CGC 2176/PCT	4972
324	7590	05/06/2011	EXAMINER	
BASF Corporation Patent Department 500 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			HAMMER, KATIE L	
			ART UNIT	PAPER NUMBER
			1761	
			NOTIFICATION DATE	DELIVERY MODE
			05/06/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/582,307	<b>Applicant(s)</b> BAILEY ET AL.	
	<b>Examiner</b> KATIE HAMMER	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16 and 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This Office Action is in response to Applicants' Remarks filed on March 9, 2011. Claims 16 and 18-27 are pending for examination. Claims 1-15 and 17 have been cancelled. Claim 16 is currently amended. Claims 18-27 are newly added.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

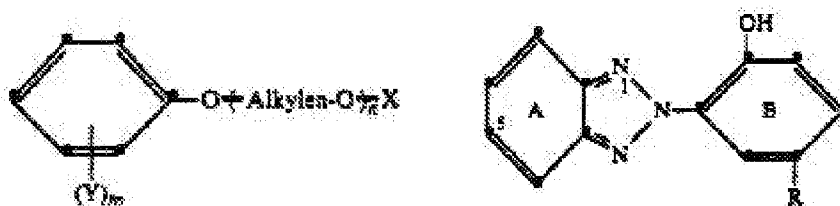
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16 and 18-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jollenbeck et al. (US 5,009,669).

As to claim 16, Jollenbeck et al. (US '669) teaches a static dyeing process for dyeing textile material which comprising dyeing this material in the presence of an aqueous dispersion comprising (A) the compound of formula (1) wherein  $R_1$  is 1-phenylethyl,  $R_2$  and  $R_3$  are, independently from the other, hydrogen or 1-phenylethyl,  $R_4$  is hydrogen, Y represents ethylene, and n is a number from 12 to 30, and X denotes hydrogen,  $C_1$ - $C_{12}$  alkyl, the acid radical of an inorganic oxygen containing acid or the radical of an organic acid (see col. 8, lines 3-10 and col. 1, lines 27-41, col. 2, lines 3-11 and the structure of formula (2) shown below left where Y is  $C_1$ - $C_{12}$  alkyl, aryl, or aralkyl and X is acid radical or an inorganic oxygen containing acid) and (B) a condensation product of formaldehyde with sulfonated ditolyl ether or a condensation

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product of formaldehyde with sulfonated di-(2-naphthyl)methane (see col. 6, lines 36-43; a composition containing as component (A) a compound of the formula (1)).



Jollenbeck et al. fails to disclose that the process is characterized in that the weight ratio of components (A):(B) is from 19:1 to 3:1.

However, it is noted that one of ordinary skill in the art could optimize the amount of each component used in the composition for the dyeing process based on routine experimentation and the teachings of Jollenbeck et al. described above. Burden is shifted to the Applicant to provide evidence that the claimed ranges produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. See *In re Dreyfus*, 22 CCPA (Patents) 830, 73 F.2d, *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980), and MPEP 2144.05.

As to claims 18-21, Jollenbeck et al. teaches a process wherein X is an acid radical derived from sulfuric or orthophosphoric acid (see col. 2, lines 36-42); the process wherein the aqueous dispersion additionally contains (C) a polyadduct of 2 to 80 moles of alkylene oxide with unsaturated or saturated monoalcohols, fatty acids, fatty amines or fatty amides of 8 to 22 carbon atoms (see col. 5, lines 38-44); a process wherein component (C) is a polyadduct of 3 to 30 moles of ethylene oxide with 1 mole of a fatty alcohol of 12 to 24 carbon atoms (polyadducts of 2 to 80 moles ethylene oxide replaced by higher saturated monoalcohols, see col. 5, lines 38-44); a process wherein

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component (C) is a polyadduct of 20 to 30 moles of ethylene oxide with 1 mole of stearyl alcohol (see col. 5, lines 38-44).

Regarding claim 22, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778F.2d 775,227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.051. Applicant has not provided evidence for the criticality of their aqueous dispersion percentage weights as compared to the composition taught in Jollenbeck et al. in a process for dyeing textile materials. Therefore, and in conjunction with the U.S.C. 112 rejection issues stated above, the claimed composition would have been obvious to one of ordinary skill in the art at the time the invention was made.

As to claims 23-27, Jollenbeck et al. teaches the process wherein the aqueous dispersion contains a UV absorber selected from benzotriazoles, phenyltriazines and benzophenones (see col. 1, lines 10-41); the process wherein the UV absorber is a benzotriazole compound of formula (2) where  $R_1$  is halogen and  $R_2$  and  $R_3$  are hydrogen (see col. 1, lines 13-26, structure of formula (1) shown above right where R is halogen); the process wherein the UV absorber is a benzotriazole compound of the formula (2a) (see col. 1, lines 13-26, structure of formula (1) shown above right where R is  $C_1$ -alkyl, and B is further substituted by a lower alkyl, the  $C(CH_3)_3$ ); the process wherein the aqueous dispersion additionally contains a stabilizing or thickening agent (see col. 4, lines 37-45); the process wherein the thickening agent is a

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heteropolysaccharide formed from the monosaccharides glucose and mannose and glucuronic acid as thickening agent (see col. 5, lines 5-15).

### ***Response to Arguments***

4. Applicant's arguments filed on March 9, 2011 (incorporating the arguments filed on October 22, 2009 and July 21, 2010) have been fully considered but they are not persuasive.

The Applicant argues that Jollenbeck et al. neither teaches nor suggests static dyeing processes nor does it address the problem of increased differential pressure during such a process. However, Jollenbeck et al. does teach that the dyeing method is always carried out in a conventional manner and that the present invention provides a process for dyeing synthetic fiber material (a type of textile material) with disperse dyes in the presence of the assistant dispersion according to the invention (see col. 8, lines 3-15). There are no active method steps in the claim to distinguish the teachings of Jollenbeck et al.'s dyeing method from the static dyeing process instantly claimed. What differentiates a static dyeing process from a "dyeing process carried out in a conventional manner" taught by Jollenbeck et al.? As to the problem of increased differential pressure, there is no mention of this in the claim language and thereby there is no requirement that Jollenbeck et al. teach such a problem.

The Applicants further argue that they have surprisingly found that the differential pressure observed during static dyeing can be substantially reduced when components (A) and (B) are combined at a weight ratio ranging from 19:1 to 3:1 then added to a

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solution containing a UV absorber. As stated in the December 10, 2010 non-final rejection, the experimental data provided by Applicant in the declaration providing evidence for this result is not commensurate in scope with the instant claims. Now, the Examples referenced in the specification also only teach four select composition weight ratios, which are still not commensurate in scope with the claim language. Furthermore, as the independent claim is now for a dyeing process, active method steps are required to distinguish the claim from the dyeing method with the aqueous dispersion that is taught by Jollenbeck et al. than merely a claimed weight ratio. Accordingly, the rejections are maintained.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/  
Supervisory Patent Examiner, Art  
Unit 1761

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Katie L. Hammer, Art Unit 1761  
April 25, 2011



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